

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF:)
)
Request for Review of the Decision of) **CC Docket No. 02-6**
Universal Service Administrator)
)
TUSTIN UNIFIED SCHOOL DISTRICT)
Tustin, California

Request for Review

The Tustin Unified School District (“Tustin” or the “District”), pursuant to and in accordance with Sections 54.719 – 54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby requests the review of Administrator’s Decision on Appeal issued by the Universal Service Administrative Company (“USAC”) as administrator of the E- Rate Program (“E-rate”). Tustin Unified School District respectfully submits that under the circumstances there is good cause for the Commission to waive the procedural deadlines in question. In particular, Tustin Unified School District¹ appeals the January 29, 2013 Administrator’s Decision on Appeal². *See Exhibit 1, Administrator’s Decision on Appeal.*³

In the Administrator’s Decision, the reasons for denial are:

“...Block 4 changes were received after the associated FCC Form 471 was committed and as such could not be processed.

AND:

¹ Tustin Unified School District’s Billed Entity Number (BEN) is 143782.

² The Form 471 in question is 824322. The funding requests involved are: 2360707, 2355620 and one as yet unassigned FRN.

³ This Request for Waiver is timely filed in accordance with Sections 54.720 and 1.4 of the Commission’s Rules within 60 days of the denial. (*March 30, 2013 fell on a Saturday so we are filing on April 1, 2013, the first business day after the due date.*)

“...you requested that a new funding request be added to your application.

Program procedures allow applicants to amend their applications and correct ministerial and clerical errors on their FCC Forms 471 (including adding a funding request) until an FCDL is issued. In your appeal, you did not demonstrate that USAC’s determination was incorrect. Consequently, your appeal is denied.”

Tustin Unified School District respectfully requests the Commission to overturn the denial and grant a waiver to allow the requested (*and allowable*) corrections to be made and to remand the application back to USAC for further processing. Any other action would be contrary to the spirit and the goals of the E-Rate program.

Background

Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections⁴. Under this regulatory authority, Tustin Unified School District annually submits E-rate application(s) for discounts on eligible products and services. During the application period for the 2012-2013 E-rate funding year, Tustin Unified School District submitted 3 Forms 471 for varying categories of service.

Billed Entity Number: Funding Year: 2012
143782

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Form 471 Application Number	Applicant Form Identifier	Application Status
824314	TUSTIN471Y15P1	Initial Review
824322	TUSTIN471Y15IC	FCDL Issued - 08/13/2012
865979	TUSDY15AV88%	FCDL Issued - 08/13/2012

⁴ 47 C.F.R. §§ 54.502, 54.503

As a consistent style of nomenclature, Tustin labeled each Form 471 with a unique identifier. In this particular funding year, Tustin submitted:

- 1) Tustin471YR15P1 (an application solely for Priority One services);
- 2) TUSDY15AV88% (a Priority Two application for entities with weighted discount average of 88%);
- 3) TUSTIN471Y15IC (a Priority Two application for entities with weighted discount average of 90%).

Notably, the last application listed – TUSTIN471Y15IC – did NOT include the 90% identifier. This was an administrative oversight, as it was intended that the application be for the 90% entities within the district. The form identifier should have read “TUSTIN471Y15IC90%” to reflect the intended application content. To further complicate matters, the incorrect Block 4 upload was done for the form and thus the Block 4 indicated a shared discount of 88% (the incorrect block coming from the simultaneously submitted Form 471 marked “TUSDYAV88%”). Finally and also unknowingly, there was an FRN left off the application for the 90% group. Tustin was completely unaware that the error in upload, nomenclature or FRN had been made at the time of submission.

The Denial Without Opportunity To Be Heard

Tustin received a funding denial letter dated August 13, 2012. Funding was denied because the Federal Communications Commission had previously determined that all Priority Two applications under 90% would not be funded due to the program demand. Upon the decision by the FCC, USAC began issuing denial letters in mass to 89% and

below Priority Two applicants. Therefore, “TUSTIN471Y15IC” was issued a denial letter *without any review or applicant outreach*.

Tustin takes specific issue with the *lack of USAC outreach prior to denial*. The FCC has established a firm precedent that E-rate applicants should be given every opportunity to review and correct E-rate applications. Under the *Bishop Perry* order released by the Federal Communications Commission on May 19, 2006, an applicant may correct ministerial or clerical errors made during the application process. The FCC noted in *Bishop Perry* that “many E-rate beneficiaries...contend that the application process is complicated, resulting in a significant number of applications for E-rate support being denied for ministerial, clerical, or procedural errors.”⁵ This decision was further clarified as part of FCC 11-60⁶ (*released April 14, 2011*) in which the FCC stated that correctable errors were allowed up until the time that an application’s FCDL is issued. The FCC is absolutely on-point in this statement and the Tustin issue at hand is evidentiary support of the FCC’s finding and need for clarification. In Tustin’s case, three applications were submitted – two for complex Priority Two requests. In each application, varying entities were included based on the need for service and the weighted discount average. Tustin concedes error in the Block 4 upload, however the error was simple in nature and impacted by the weight of E-rate regulations and deadlines. The error was also simply correctable – a review of the correct Block 4 clearly indicates the correct 90% discount – however, Tustin was simply unaware of the error until the funding denial letter arrived; as is the case with the inadvertent exclusion of an additional funding request that was to

⁵ *Request for Review by Bishop Perry Middle School, New Orleans, Louisiana, Federal-State Board on Universal Service*, Files No. SLD-487170, *et al* (“*Bishop Perry*”).

⁶ See *E-Rate Correction Deadline Order* http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-60A1.pdf

be part of the entire 90% project. The only part of the process that has been laid out by the FCC was the outreach by USAC prior to the issuance of the FCDL. With that piece, we would not be in the position we find ourselves in at the moment, having to request relief due to an incomplete review process.

A cornerstone of American law – both common law and regulatory law – is due process; the basic right to notice and opportunity to be heard. In Tustin's case, a funding request in excess of one million dollars was at stake and Tustin was not given the opportunity to review the application with a Program Integrity Assurance (PIA) reviewer. Had that opportunity arisen, both parties would have quickly realized the incorrect Block 4 was uploaded to the application and that an FRN was missing in its entirety. The errors would have been absolutely correctable during the PIA process **had they been given the opportunity.**

In Tustin's case though, Tustin was unaware of the error, received no notice from USAC of the possible denial and was not given an opportunity for the application to be reviewed – rather a denial letter was simply issued. Tustin lost a significant – and much needed – funding opportunity because of an undiscovered error...the exact situation *Bishop Perry* and the *E-Rate Correction Deadline Order* endeavored to avoid.

Relief Requested

With all due response, we feel strongly that is not unreasonable to expect under the aegis of *Bishop Perry* and the *E-Rate Correction Deadline Order* that USAC exercise due diligence to support the needs of the applicant by at least providing one last opportunity to correct any allowable errors prior to the issuance of an application denial. Therefore, the applicant, by and through their contractually designated E-rate consultant, hereby

requests the opportunity to provide the correct Block 4 to the application, provide the information to add the missing funding request and have application # 824322 reviewed for Priority Two funding.

Respectfully Submitted,

/s/

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